



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 4600-02
29 January 2003

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 January 2003. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 30 September 1965 at the age of 22. You then served for two years and eight months without disciplinary action. However, on 14 May 1968, you begin an 89 day period of unauthorized absence (UA). On 18 June 1968, during this period of UA, you were apprehended by civil authorities and charged with maintaining a place for the unlawful use of narcotics. On 5 July 1968 you were convicted by civil authorities of the foregoing charge and sentenced to 60 days in jail, with credit for time served, and probation for three years. On 11 August 1968 you were returned to military control. On 9 September 1968 you were convicted by special court-martial (SPCM) of the 89 day period of UA. You were sentenced to confinement without hard labor for a month and reduction to paygrade E-3.

On 11 October 1968 you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After consulting with legal counsel you submitted a statement which outlined your marital problems. Subsequently, your commanding officer recommended you be issued an undesirable discharge by reason of misconduct due to the civil conviction.

On 4 December 1968 the discharge authority directed an undesirable discharge by reason of misconduct, and on 19 December 1968 you were so separated.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, post service conduct, and your contention that your discharge was based on a civil conviction that was dismissed after a period of probation. The Board further considered your contention that you were not afforded counselling or consideration to explain the difficulties and extenuating circumstances of your behavior during your enlistment. It further considered your character reference letters. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge because of your serious misconduct in both the military and civilian communities, which resulted in your discharge. The Board concluded that any action to expunge the conviction by civil authorities does not change the fact that in 1968 you were convicted. Such favorable action operates prospectively. Further, there was no requirement that you be counselled prior to discharge. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director